

These are the tentative rulings for civil law and motion matters set for Friday, February 13, 2015, at 9:30 a.m. in the TAHOE DIVISION (Department 14) of the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m., Wednesday, February 11, 2015. Notice of request for oral argument to the court must be made by calling (530) 584-3463. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER TRILLA E. BAHRKE AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 14, LOCATED AT 2501 N. LAKE BLVD., TAHOE CITY, CALIFORNIA.

1. T-CV-0001972 Gunia, Dolores vs Hennig, Jacqueline et al

The motion for preliminary injunction is denied.

The motion is not properly before the court. Where defendants have not appeared in the action, a preliminary injunction may be sought only by an order to show cause personally served on defendants; relief by noticed motion is not available. C.R.C. 3.1150(a) ("An OSC must be used . . . if the party against whom the preliminary injunction is sought has not appeared in the action. If the responding party has not appeared, the OSC must be served in the same manner as a summons and complaint."). Here, relief was sought by noticed motion which was not served on defendants. Rather, it was mailed to an attorney who has not appeared in the action. Prior personal service of previous motions for preliminary injunction do not cure these defects.

Even if the motion were properly before the court, it would be denied. Plaintiff has not shown a likelihood of success on the merits or that she will suffer irreparable harm if relief is not granted.

First, plaintiff has not shown a likelihood of success on the merits. Plaintiff's argument takes for granted that the subject property is community property to which she succeeds by intestacy. However, the evidence before the court not only does not tend to establish that the subject property is community property, it actually tends to show that the property is *not* a community interest.

Property obtained before marriage is separate property. Fam.C. § 770(a)(1). The moving papers admit that plaintiff's husband acquired the subject property interest prior to marriage. The available evidence of record title of the subject interest shows that it was in the name of decedent Steve Gunia prior to the refinance and that the parties intended to reconvey it to Mr. Gunia after the refinance. There is a statutory presumption that record title controls. Evid.C. § 662.

The available evidence is not sufficient to overcome the statutory presumption as to the alleged property interest. Plaintiff appears to argue that use of community funds to pay indebtedness for the separate property or to improve or maintain separate property converted it

into community property. No legal authority is provided for this assertion. Indeed, such use of community funds does not constitute a complete transmutation of the property, although, it may give rise to a pro tanto claim to a portion of the property or a claim for reimbursement. Marriage of Moore (1980) 28 Cal.3d 366; Marriage of Marsden (1982) 130 Cal.App.3d 426; Bono v. Clark (2002) 103 Cal.App.4th 1409. There is no evidence of any express transmutation of the property.

Unless the property is community property, plaintiff's argument that she succeeds to decedent's share fails—at least in part. If any of the subject property remained decedent's separate property, plaintiff only succeeds to the entire interest "if the decedent did not leave any surviving issue, parent, brother, sister, or issue of a deceased brother or sister." Prob.C. § 6401(c). Here, the motion describes Mrs. Hennig as decedent Steve Gunia's sister. Because she is named as a defendant and appears to have been served with the summons and complaint, the court presumes she survives. Accordingly, plaintiff likely succeeds only to one-half of decedent's separate property interest (Prob.C. § 6401(c)(2)(B)), defeating any showing of likely success on the merits.

Second, plaintiff has not shown she will suffer irreparable injury. Plaintiff argues that defendants have "recently" listed the subject property for sale without her consent. Plaintiff filed a notice of pendency of action September 4, 2014, and has presumably since recorded the notice of pendency of action. Recording a notice of pendency of action causes any subsequent transferee to take the property subject to a judgment later entered in this action. Knapp Dev. & Design v. Pal-Mal Props. (1987) 195 Cal.App.3d 786. Plaintiff's rights and interests in the property under a later judgment would relate back to the date of recording. C.C.P. § 405.24. Because plaintiff has apparently invoked this available remedy to protect her interest, she cannot show that she will suffer irreparable harm if the preliminary injunction is denied.

These are the tentative rulings for civil law and motion matters set for Friday, February 13, 2015, at 9:30 a.m. in the TAHOE DIVISION (Department 14) of the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m., Wednesday, February 11, 2015. Notice of request for oral argument to the court must be made by calling (530) 584-3463. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.